

COUNTY OF LOUDOUN

DEPARTMENT OF PLANNING AND ZONING

MEMORANDUM

DATE: October 1, 2014

TO: The Loudoun County Planning Commission

FROM: Mark Depo, Senior Planner, Zoning Administration

SUBJECT: **ZOAM 2014-0003, Limited Brewery and Agricultural Processing Zoning Ordinance Amendment**
Planning Commission Work Session, October 7, 2014

The Planning Commission held a public hearing on the subject Zoning Ordinance amendment on September 16, 2014. There were 9 members of the public that spoke at the hearing. Speakers included representatives from the Zoning Ordinance Action Group (ZOAG), Visit Loudoun, Virginia Farm Winery operators, and Loudoun Farm Brewers Association.

At the conclusion of the Public Hearing, the Planning Commission voted to forward the ZOAM to the October 7, 2014 work session for further discussion (8-0-1, Ryan absent).

In preparation for the work session, the Planning Commission requested the following information: 1) Clarification of Code of Virginia § 15.2-2288.3:1 and a jurisdiction's ability to regulate a Limited Brewery use; 2) Citizen complaints related to Virginia Farm Winery and Limited Brewery uses; 3) Limited Brewery use standards in other Virginia jurisdictions; and 4) Limited Brewery use compared to other uses. A summary of the requested information can be found below.

Staff reiterates that the economic, development, tourism, and agricultural benefits related to the Limited Brewery use is in keeping with the County's vision for a vibrant and successful rural economy and fully supports the introduction of the use in Loudoun County. However, as stated at the Public Hearing, the proposed Standards are not intended to restrict the Limited Brewery use, but are intended to protect the health, safety and welfare of the public by mitigating the impact of the use on adjacent properties and surrounding communities.

To this end, and based on public comments and Planning Commission discussion at the Public Hearing, Staff has provided revised standards for the Limited Brewery use in Attachment 1. The revisions are intended to remove proposed Standards perceived as restricting the establishment of the use, reduce proposed Standards, and designate specific Standards for specific activities. These revisions include: 1) eliminating the requirement that the use of heavy equipment shall have direct

access to a paved road (5-667(E)(2)); 2) reducing the parking setback (5-667(C)); 3) requiring landscaping for outdoor activities and not for the use as a whole.

Staff will discuss more thoroughly these newly proposed standards at the work session.

Information requested by the Planning Commission at the September Public Hearing

1) Code of Virginia § 15.2-2288.3:1 and a Jurisdiction's Ability to Regulate a Limited Brewery Use

Many of the public hearing speakers discussed the legality of applying standards to the Limited Brewery use and the intent of the Virginia Senate and House of Delegates related to Senate Bill 430 ("SB 430"). While Staff cannot speak to the intent of the legislation, Staff has provided the following responses to address speaker comments and Staff's interpretation of the Code of Virginia.

Code of Virginia § 15.2-2288.3:1 provides that a jurisdiction is allowed to apply development standards to a Limited Brewery use. Although § 15.2-2288.3:1 limits certain local regulation of limited brewery licensees, § 15.2-2288.3:1 does authorize local regulation to protect the health, safety, and welfare of its citizens, and authorizes local regulation of outdoor amplified music, minimum parking, road access, or road upgrade requirements. The following sections of § 15.2-2288.3:1 highlight (red underlined text) where a jurisdiction is allowed to apply Standards for a Limited Brewery use:

Code of Virginia § 15.2-2288.3:1. Limited brewery license; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § 4.1-208 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

PUBLIC COMMENTS/ISSUES RAISED AT THE SEPTEMBER 16, 2014 PUBLIC HEARING

ISSUE 1: A speaker stated that Standards related to activities usual and customary to a Limited Brewery must take into account the economic impact on such licensed brewery and the agricultural nature of such activities. The speaker also stated that § 15.2-2288.3:1. requires the Limited Brewery use to be established before any Standards are applied so that substantial impact may be determined.

Staff agrees that Standards related to Limited Brewery activities and events must be reasonable and take into account the economic impacts and the agricultural nature of such activities and events, as well as, whether such activities and events are usual and customary. However, usual and customary activities and events are permitted “unless there is a substantial impact on the health, safety, or welfare of the public.” (Code of Virginia § 15.2-2288.3:1.A.)

Loudoun County already contains one licensed Limited Brewery and one licensed Brewery located in the AR-1 zoning district. In addition, a Limited Brewery is similar to a Virginia Farm Winery of which 40 are located in Loudoun County. Staff interprets the legislation for Limited Brewery as being similar to and consistent with Farm Wineries in that a jurisdiction is allowed to apply Standards to mitigate impacts in an effort to protect the health, safety, or welfare of the public consistent with Code of Virginia § 15.2-2288.3:1.A.

In a July 19, 2013 office of the Virginia Attorney General provided an official advisory opinion regarding the ability for Fauquier County, VA to apply Standards to Farm Wineries consistent with § 15.2-2288.3(A). The official opinion states, “this Office [office of the Attorney General] does not offer a view on the validity of these remaining sections [§ 6-401, subsections 8 and 9, Sections 6-402, 6-403, 5-1810.1 and 5-1810.2] of the Fauquier County Zoning Ordinance under the locality's zoning authority.” These listed Sections of the Fauquier County Zoning Ordinance provide development standards for such things as Noise, Lighting, Setbacks, Parking, Food Establishments, Occupancy, Closing Time, Server Training, and Events and prohibits specific accessory uses. [Attachments 2 and 3]

Additionally, the speaker commented on the statement “...substantial impact on the health, safety, or welfare of the public” found in Code of Virginia § 15.2-2288.3:1.A as it relates to a jurisdiction’s ability to regulate Limited Breweries and that this “substantial impact” language is only found under Farm Wineries. The term “substantial impact” is not defined in the Code of Virginia but is found in the Code of Virginia § 15.2-2288.3.A. Farm Wineries; § 15.2-2288.3:1.A. Limited Breweries; and § 15.2-2288.6.A. Agricultural Operations.

ISSUE 2: A speaker made reference to the summary statement of the adopted Code of Virginia § 15.2-2288.3:1 regarding a jurisdiction’s ability to regulate minimum parking, road access, or road upgrade requirements on any licensed Limited Brewery. Staff has interpreted § 15.2-2288.3:1.C to allow a jurisdiction to either regulate or exempt minimum parking, road access, or road upgrade requirements.

The summary statement the speaker referenced is the online summary of the SB 430 legislation as initially passed by the Senate that states,

“The bill limits local regulation of limited brewery licensees and specifically prohibits the imposition of minimum parking, road access, or road upgrade requirements on any licensed limited brewery.”

However, the summary statement found online was not updated to reflect the adopted legislation. The SB 430 language was subsequently amended by the House of Delegates and it was this revised language that passed both Virginia Senate and House of Delegates and was signed by the Governor. The following demonstrates the difference in the initial language passed by the Senate and the adopted language:

ORIGINAL PROPOSAL: § 15.2-2288.3:1.C Proposed by the Senate Committee on January 24, 2014

“No local ordinance should impose minimum parking, road access, or road upgrade requirements on any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural, unless the operations of such brewery create a substantial impact on the health, safety, or welfare of the public.”

ADOPTED: § 15.2-2288.3:1.C Approved March 27, 2014. Effective July 1, 2014

“Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.”

ISSUE 3: In reference to the information provided by a speaker at the public hearing that compared the Limited Brewery and Farm Wineries Sections of the Code of Virginia, there were two important Sections that were not provided. Section 4.1-208.2 related to beer license and Limited Brewery and § 4.1-219 related to limitations on Farm Wineries.

§ 4.1-208. Beer licenses.

“2. Limited brewery licenses, to breweries that manufacture no more than 15,000 barrels of beer per calendar year, provided (i) the brewery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured, exclusive of any residence and the curtilage thereof. However, the Board may, with notice to the local governing body in accordance with the provisions of § 4.1-230, also approve other portions of the farm to be included as part of the licensed premises.

Limited brewery licensees shall be treated as breweries for all purposes of this title except as otherwise provided in this subdivision.”

§ 4.1-219. Limitation on Class A and Class B farm wineries.

“For Class A farm winery licensees, at least 51 percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth.

For Class B farm winery licensees, 75 percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced in the Commonwealth and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth. No Class B farm winery license shall be issued to any person who has not operated under an existing Virginia farm winery license for at least seven years.

However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use (i) of a greater quantity of out-of-state products if supplies grown or produced in the Commonwealth are insufficient for a farm winery licensee, whether Class A or Class B, to achieve the level of production which otherwise could be anticipated during a given license year or (ii) by a Class A farm winery of a lesser percentage of products grown or produced on the farm if unusually severe weather or disease conditions cause a significant reduction in the availability of fruit or other agricultural products grown or produced on the farm to manufacture wine during a given license year. As used in this section, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. The term "farm" as used in this section includes all of the land owned or leased by the farm winery licensee as long as such land is located in the Commonwealth.”

These two Sections are important while comparing the uses of Limited Breweries and Farm Wineries. A Limited Brewery is treated as a brewery and as a separate and distinct activity from other activities on the farm: “... *licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured...*”. This is not the case for Farm Wineries where the entire property of the Farm Winery is licensed. In addition, the farm where the Limited Brewery is located is an “Agricultural operation” as defined in §3.2-300 of the Code of Virginia, however staff has interpreted that the Limited Brewery itself, also required to be located on a farm, is not an “Agricultural operation” nor is it included within the definition of “Agritourism activity” as defined in § 3.2-6400. [Definitions provided, below] Again, this is not the case for Farm Wineries where there are limitations for Farm Wineries regarding agricultural production (See Section 4.1-219, above) and a Farm Winery is specifically included within the definition of an “Agritourism

activity”.

“Agricultural operation” means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

“Agritourism activity” means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

2) Citizen Complaints Related to Virginia Farm Winery and Limited Brewery Uses

Over the years Zoning Enforcement has received complaints related to Virginia Farm Wineries. The complaints range from tasting rooms functioning as a bar in a residential area to signage along public roadways to questions regarding, setbacks for buildings and parking and general concerns regarding noise, traffic, trash and drivers under the influence.

The Virginia Department of Alcoholic Beverage Control (ABC) provides a list of approved breweries throughout Virginia [<http://www.abc.virginia.gov/>]. One licensed Limited Brewery (origination date 7/2/2014) and one licensed brewery (origination date 8/16/2012) are located in the AR-1 zoning district in Loudoun County. Complaints have been received for both breweries that include issues related to the brewery being in conflict with the Homeowners Association (HOA), setbacks for buildings and parking, noise, traffic, trash and drivers under the influence.

3) Limited Brewery Use in Other Virginia Jurisdictions

As requested by the Planning Commission, Staff contacted the following Virginia jurisdictions regarding the Limited Brewery use: Albemarle County, Clarke County, Fairfax County, Fauquier County, Nelson County, Prince Williams County, Rappahannock County Warren County, and York County. Of the Counties contacted only one, Warren County, has adopted language to address the Limited Brewery use and Code of Virginia § 15.2-2288.3:1. The other counties are either in the process or have not started any process to amend their Zoning Ordinance. Staff has provided information from these counties in Attachment 4.

4) Limited Brewery Use Standards Compared to Other Uses

The standards proposed by Staff are not intended to restrict the Limited Brewery use but are intended to protect the health, safety and welfare of the public by mitigating the impact of the use on adjacent properties and surrounding communities. The proposed standards are not new to the Zoning Ordinance but are standards that already exist for several agricultural and commercial uses that operate or provide accessory functions similar to a Limited Brewery use, such as Bed

and Breakfast and Country Inn uses (§ 5-601); Commercial Winery (§ 5-625); Agriculture, Horticulture and Animal Husbandry (§ 5-626); Agriculture Support Uses, Direct and No Direct Association with Agriculture, Horticulture or Animal Husbandry (§ 5-627 and § 5-630); Farm Based Tourism (§ 5-628); Banquet/Event Facilities (§ 5-5-642); and Restaurant, in the AR districts (§ 5-643). Additionally, these uses are also subject to the following additional performance standards: Exterior Lighting and Noise Standards for Specific Uses (§ 5-652); Landscaping Standards for Specific Uses (§ 5-653); and Road Access Standards for Specific Uses (§ 5-654). Staff has provided information comparing the proposed Limited Brewery Standards and the uses listed above, in Attachment 5.

Attachments

1. Revised Limited Brewery Regulations dated October 1, 2014
2. July 19, 2013 Virginia Office of the Attorney General advisory opinion
3. Fauquier County regulations for Farm Wineries
4. Virginia Counties Comparison Table
5. Loudoun County Use Comparison Table
6. Farm Winery/Limited Brewery Code of Virginia Information
7. Code of Virginia

CC:

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